In the High Court of Punjab and Haryana at Chandigarh.

Civil Writ Petition No.10551 of 2006.
Date of decision:9.7.2007.

Bhula ...Petitioner.

Versus

State of Haryana and others. ...Respondents.

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Coram: Hon'ble Mr. Justice K. S. Garewal.
Hon'ble Mr. Justice S. N. Aggarwal.

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Present; Mr.Vishnu Sharma Advocate for the petitioner.

Mr.Anil Rathee, Addl. Advocate General, Haryana
for respondents No.1 to 6

Mr. Babbar Bhan, Advocate for respondent No.7.
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Judgment.

S. N. Aggarwal, J.

Bhula petitioner was elected as Sarpanch of Gram Panchayat, Singhwal, District Jind on 9.4.2005. A complaint was filed against him by Ram Diya on 10.5.2005 to the effect that Bhula petitioner was in illegal possession of 2 Marlas of Shamlat land comprised in Khasra No.197/1, Gair Mumkin Pond. Accordingly, the Deputy Commissioner, Jind directed the District Development & Panchayat Officer Jind to conduct an enquiry against the petitioner who after enquiry submitted his report dated 29.7.2005 to the effect that the petitioner had not encroached upon land measuring 2 Marlas

comprised in Khasra No.197/1.

The petitioner also furnished an affidavit before the Deputy Commissioner, Jind on 20.9.2005 denying illegal encroachment by him on any piece of Shamlat land but the Deputy Commissioner suspended the petitioner vide order dated 27.10.2005. The petitioner filed an appeal against the said order before respondent No.1. The appeal was dismissed vide order dated 10.1.2006. Respondent No.1 however directed for holding of fresh enquiry within a period of one month failing which the petitioner was to be reinstated automatically on 15.2.2006. The Additional Deputy Commissioner conducted fresh enquiry and submitted enquiry report dated 9.1.2006 (Annexure P-4). It was held that the petitioner had illegal encroachment on two Marlas of Shamlat land and on its basis, the Deputy Commissioner removed the petitioner from the post of Sarpanch under Section 175(i)(N) of the Haryana Panchayati Raj Act, 1994 (in short Act of 1994) vide order dated 20.2.2006 (Annexure P-5). The appeal filed by the petitioner was dismissed by respondent No.1 vide order dated 11.7.2006 (Annexure P-6).

Hence, the present petition.

The submission of learned counsel for the petitioner was that the demarcation of Shamlat land in village Singhwal was conducted by the Tehsildar on 29.10.2002 according to which the petitioner was found in illegal possession of two Marlas of land comprised in Khasra No.197/1. As noticed in the order dated 10.1.2006

passed by respondent No.1, earlier the petitioner had made a platform (Chabutra) on the land measuring two Marlas belonging to the Shamlat land. The petitioner pleaded that the illegal possession was vacated by him within ten days after that report. Even after a complaint was filed against the petitioner by Ram Dia son of Sardara, an enquiry was conducted by the District Development and Panchayat Officer about the alleged illegal encroachment by him on the Shamlat land who vide his report dated 29.7.2005 (Annexure P-1) had reported as under:-

> "After perusal of the office file, statement of both the parties and report, I reached on the conclusion that as per the site inspection report submitted by BDPO, Narwana that Sarpanch has not made any permanent illegal encroachment on the land comprised in Khasra No.197/1, Gair Mumkin Pond. Whereas only 5-6 trollies of soil and a small Ruri is there. There is no provision under the Haryana Panchayati Raj Act,1994 that a Sarpanch who is defaulter of the Bank, he is disqualified. In this connection, complainant has not produced any evidence/ witnesses.
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> So the allegation levelled on the Sarpanch for the permanent illegal encroachment is not proved."

We find force in the submission of learned counsel for the petitioner that he was not in permanent illegal encroachment of Shamlat land on 9.4.2005 when he contested for the office of Sarpanch. The report of the District Development and Panchayat Officer, Jind

dated 29.7.2005 (Annexure P-1) reveals that no such permanent encoachment was there on that date on the Shamlat land measuring two Marlas. It clearly means, therefore, that the petitioner was not in illegal possession of two Marlas of Shamlat land and the permanent platform which he had raised and which was noticed in the demarcation proceedings conducted on 29.10.2002, was removed by the petitioner as alleged by him much before 29.7.2005 Therefore, there is merit in the submission of the learned counsel for the petitioner that the permanent encroachment on the Shamlat land was removed by the petitioner in 2002 itself i.e. before the enquiry proceedings were initiated against him.

It appears that 5 or 6 trollies of soil and small Rori which were found on the Shamlat land by the District Development and Panchayat Officer in his report dated 29.7.2005 were ordered to be taken away from the Shamlat land but that cannot be termed to be encroachment because it still remains accessible to the general public. But if a permanent structure is raised, it becomes a part of his house and amounts to encroachment. Sometimes people keep the sand in front of their houses in the public street but that does not amount to encroachment as the general public still pass through that street and when it becomes a source of nuisance, it is got removed. At the most, it amounts to misuse of the public place and not encroachment. Therefore, the enquiry report submitted by the Additional Deputy Commissioner, Jind regarding the illegal encroachment by the

petitioner over the panchayat land only relates to the removal of soil or the small Ruri which cannot be termed to be a kind of permanent encroachment by the petitioner.

When the petitioner has been stating time and again that he was found to have illegally encroached upon the Shamlat land on 29.10.2002 and he had removed the illegal encroachment within ten days, it has not been controverted by the respondents if it was not so done by him. As has been discussed above, the petitioner had raised a permanent platform as noticed in the order of the Financial Commissioner dated 10.1.2006, Annexure P-3 but that was not there on 29.7.2005 as per the report of the District Development and Panchayat Officer, Jind (Annexure P-1).

Therefore, the findings recorded by the respondents that Bhula continued to be in illegal possession of the Shamlat land and the encroachment was removed in October 2005 and which was made the basis for his removal from Sarpanchship cannot be sustained. Accordingly, this writ petition is accepted and the impugned orders dated 20.2.2006 and 11.7.2006 are set aside.

(S. N. Aggarwal)
Judge

July 9,2007. (K. S. Garewal)
Jaggi Judge